

In the United States Bankruptcy Court
for the
Southern District of Georgia
Savannah Division

In the matter of:)	
)	Chapter 13 Case
BRIDGETTE L. REDDICK)	
)	Number <u>97-40794</u>
<i>Debtor</i>)	
)	
)	
CARVER STATE BANK)	
)	
<i>Movant</i>)	
)	
v.)	
)	
BRIDGETTE L. REDDICK)	
)	
<i>Respondent</i>)	

MEMORANDUM AND ORDER

Debtor's case was filed March 20, 1997. A Consent Motion for Relief from Stay was submitted on April 11, 1997, whereby the parties agreed to, and the Court ordered, that stay relief be granted to Carver State Bank. Thereafter, because of an apparent change in Debtor's plans, the Debtor filed, on April 28, 1997, a Motion to

Reconsider the Order Granting Relief from Stay. No interlocutory relief was sought and the hearing was scheduled in due course for May 28, 1997. In the meantime, Carver State Bank, having advertised its foreclosure sale under state law and being under no impediment to conduct the sale, proceeded to foreclosure on the first Tuesday in May 1997 and the property was sold during the legal hours of sale.

At the hearing on May 28 Debtor asked that the Court enter an order setting aside the foreclosure, reinstituting the stay and permitting her to cure her arrearages in her Chapter 13 plan. At the conclusion of the evidence the Court took the matter under advisement and directed the parties to file briefs in support of their respective position. Carver's brief was received on June 16. No brief has been received from the Debtor.

Having considered the evidence and the citations relied upon by Carver State Bank, I conclude that the Motion to Reconsider should be denied. The law is clear that once property is foreclosed upon, in the absence of an intervening stay, any request to retroactively reimpose the stay is moot and the Court is powerless to rescind the foreclosure sale. *See Lashley v. First National Bank of Live Oak*, 825 F.2d 362 (11th Cir. 1987); *see also In re Sewanee Land, Coal & Cattle, Inc.*, 735 F.2d 1294 (11th Cir. 1984). Of course, had the stay been in effect, any post-filing act to foreclose on the property would be void as a matter of federal bankruptcy law. *See* 11 U.S.C. § 362. However, that is not

the case here. At the time the foreclosure sale was pending the stay had been lifted, no appeal had been taken from that order, and while there was a Motion to Reconsider, there had been no action to reimpose the stay pending the hearing on the Motion to Reconsider. Accordingly, the creditor was within its rights to proceed with its foreclosure sale, the stay did not interpose any bar against creditor activity during the interim, and the Court lacks any authority to rescind the action at this time.

Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This ____ day of June, 1997.